

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION, :

Petitioner, :

v. :

STATE OF DELAWARE,
DEPARTMENT OF CORRECTION :

Respondent. :

U.L.P. No. 95-02-121

U.L.P. No. 95-02-124

BACKGROUND

The Delaware Correctional Officers Association ("DCOA" or "Union") is an employee organization within the meaning of Section 1302(h) of the Public Employment Relations Act ("PERA"), 19 DeL.C. Chapter 13 (1994). The DCOA is the exclusive bargaining representative of employees in the State's Adult Correctional Institutions within the meaning of Section 1302(i).

The State of Delaware Department of Correction ("Employer") is a public employer within the meaning of Section 1302(m) of the PERA.

The parties have been involved in collective bargaining since April, 1994. Ground rules governing the negotiations, agreed to on May 18, 1994, provide that eleven (11) members of the Charging Party's bargaining team of seventeen (17) will be granted time off with pay including 1/2 hour of travel time to and from the negotiations.

Charge No. 121 alleges that on March 3, 1995, two (2) members of the Charging Party's negotiating team were denied the opportunity to participate in the negotiation meeting and one (1) member was required to leave early in order to report for work.

The Charging Party contends that one (1) of the absent employees volunteered to work and the other was absent due to illness. The third employee was required to leave the negotiations early in order to report for work because he/she failed to arrange for relief, as agreed.

Charge No. 124 alleges that on March 10, 1995, and March 24, 1995, one (1) employee was required to leave the negotiations early to report for work.

The Respondent maintains the employee was required to report for work because he/she failed to arrange for relief, as agreed.

Together, the charges allege violations of Section 1307(a)(1), (2), (5), (6) and/or (7), of the Act.

DECISION

Section 1307, Unfair Labor Practices, provides in relevant part:

(a) It is unfair labor practice for a public employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this Chapter.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject of bargaining.
- (6) Refuse or fail to comply with any provision of this Chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this Chapter.
- (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting document.

The PERB concurs with the Executive Director's ruling that the pleadings raise no probable cause to believe that a violation of Sections 1307(a)(1), (2), (6) of the Act has occurred.

Insofar as the alleged violation of Section 1307(a)(5), this Board has previously determined that an individual incident constitutes a "per se violation" only where it is so "egregious" as to be "inherently destructive" of the duty to bargain in good faith.

The Charging Party alleges no significant impact upon the bargaining process nor any allegation of bad-faith in the preceding year during which bargaining occurred on a continuing basis.

WHEREFORE, the August 31, 1995, decision of the Executive Director, dismissing the Charge, is affirmed.

IT IS SO ORDERED.

DATED: October 27, 1995

/s/Arthur A. Sloane
Chair

/s/Henry E. Kressman
Member

/s/John D. Daniello
Member